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MADAGASCAR

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I. LAND AND PEOPLE

A. The land

1. Geographical situation

1. Madagascar is an island lying off the east coast of Africa between 12° and 26° south latitude and 43° and 51° east longitude. Its southern tip is crossed by the tropic of Capricorn. Separated from the African continent by the 400 kilometre wide Mozambique Channel, Madagascar is surrounded by other islands, including the Comoros 400 kilometres to the north-west, the Seychelles 1,200 kilometres to the north-east, and Réunion and Mauritius, which lie 600 kilometres and 800 kilometres to the east respectively.

2. Relief and climate

With a surface area of 587,041 square kilometres, Madagascar is the fourth largest island in the world, after Greenland, New Guinea and Borneo. Huge and elongated (1,580 kilometres long and 580 kilometres wide), the island is characterized both by a rugged topography and a range of climates extending from the tropical to the temperate. There are five distinct ecological zones corresponding to well-defined climatic and hydrological conditions.

3. The high (about 900 metres) plateau, composed of impermeable crystalline rock covered with a mantle of laterite, has a well developed drainage system, with occasional volcanic zones. The average annual rainfall is between 1,200 and 1,600 millimetres (six to seven months of rain, six to five months of dry season, with a four-month water deficit). These plateaus form the central region of Madagascar, running like a backbone down the length of the island. The numerous hills shelter small fertile valleys suitable for irrigated rice growing. The temperate and subtropical climate favours the cultivation of fruits and vegetables.

4. In the west, the coastal region slopes gently down from the central mountains to the Mozambique Channel. This region is composed of a wide band of sedimentary deposits, which form broad low-lying (from 0 to 200 metre) coastal plains separated by hilly ground and crossed by numerous rivers which, despite their size, have an irregular flow. The annual rainfall reaches about 1,500 millimetres in the north but falls to 800-900 millimetres in the south. This rainfall pattern, combined with annual average temperatures that vary between 23° C and 30° C (sometimes with minima of 13° in July and August), makes these areas a dry tropical pastoral region suitable for growing cotton, groundnuts and leguminous crops.

5. The east coast, a narrow (between 25 and 100 kilometres wide) strip of mainly sandy sediments, slopes steeply down from the high central plateau to the Indian Ocean. A region characterized by a tropical climate and abundant rainfall (between 3,400 and 1,500 millimetres per year), from north to south there is practically no water deficit. This region is often hit by cyclones. Surface water is abundant thanks to a very dense drainage system of very narrow rivers. After having watered the coastal plain most of these rivers

discharge into the sea, but not before forming the lakes and swamps linked by the Canal des Pangalanes. This region is particularly suitable for growing coffee and tropical fruits.

6. The north-east region is a hydrogeological extension of the western sediments. Consisting mainly of a zone of limestone relief with a network of underground rivers and the volcanic massif of the Montagne d'Ambre, it receives a great deal of rain throughout the year (between 1,000 and 3,000 millimetres). The rivers, though irregular, generally flow all year round. However, fresh water lakes, without being abundant, encroach on the river network. Sugar cane, cocoa, coffee and spices are grown, especially in the climatic enclave of the Sambirano region.

7. In the south, the relatively flat landscape forms a continuation of that in the west. Here, the rivers descending from the crystalline central plateau flow permanently, even though the rate of flow may vary a great deal according to the season. This is an arid region with a low annual rainfall (400 to 600 mm), characterized by a long dry season (three months of rain and nine months of drought). The principal activity is extensive cattle farming.

B. Population

1. Ethno-sociological characteristics

8. Several hypotheses have been advanced concerning the origin of the Malagasy people. But whatever their origin, it is a fact that a mixture of populations, once settled, gave birth to the true people of Madagascar. Thus, the Malagasy people is simultaneously characterized by ethnographic variety and ethnographic unity. The various populations are the result of the blending of different elements. They include people of different colour. Moreover, the Malagasy people is composed of ethnic groups scattered throughout the island. Each group has its own traditions, but the factors contributing to national unity carry the most weight.

9. This unity is to be found, with certain variations, in the material civilization, in the traditional oral literature, in the arts and, generally speaking, in the popular culture. Although each economic region has its own identity, national unity also finds expression in the modes of agriculture and the complementarity of resources.

10. The Malagasy population is very dispersed and, leaving aside the urban centres and such vital sectors as the deltas and alluvial plains, the land is thinly settled; moreover, quite a few regions, though rich, are enclaved and served by roads that are deteriorating for lack of maintenance or material and financial resources.

11. During the period 1950 to 1975, the growth rate increased from 1.59 to 3.5 per cent between 1960 and 1970. The first national census in 1975 recorded a population of 7,640,000. In 1984, a socio-demographic survey indicated a total population of 9,607,000. In 1990, the population of Madagascar was estimated at 10,944,000 with an average density of 19 per km^2, very unevenly distributed as already explained.

12. The global fertility rate (6.1) is 171 live births per 1,000 women of child-bearing age. The crude mortality rate is 17.6 per thousand, and life expectancy at birth is 54.5 years. The natural increase in population lies within the range of 2.7 to 3.2 per cent per year, which indicates that the population should double within 22 to 26 years. The proportion of young people is especially high: 46 per cent of the population is less than 15 years old as compared with 3 per cent over 60.

13. It is immediately possible to make two important observations:

The dependency ratio is high (93 per cent);

The population is largely rural (76 to 80 per cent).

14. The most recent figures on the distribution of the population according to sex and age are those for 1992:

Age	M	F	Combined
1	207 416	200 845	408 261
5	170 941	167 500	338 441
10	150 953	149 640	300 592
15	140 005	138 767	278 773
20	119 320	119 371	238 691
30	80 036	87 805	167 840
40	51 218	56 506	106 724
50	29 981	31 113	64 124
60	13 400	24 411	47 329
70	5 794	13 613	27 013
84		5 283	11 077
Grand Total:	5 831 091	5 965 781	11 796 873

C. Economic data

15. In 1975, the Second Republic (Democratic Republic of Madagascar) opted for an ideology based on socialism, a centralized and highly State-controlled economy and a policy of nationalization of the most important sectors. Because of bad management and the repercussions of the international economic crisis this policy failed to give the anticipated results.

16. In 1985, Madagascar was still trying to stabilize its external and internal finances while halting the serious economic deterioration of the years 1981-1982. Starting in 1988, economic policy became oriented towards a process of State disengagement which gave encouraging results, although the Malagasy economy remained precarious:

(a) Worsening of the terms of trade because of the collapse of world prices;

(b) Fiscal deficit;

(c) External trade deficit;

(d) External debt burden amounting to 2.21 billion SDR in 1990, with 18.4 per cent of the State budget going towards servicing the external debt;

(e) High inflation, which reached 20 per cent in 1987-1988.

17. The following figures have been taken from various national reports and reports published by international institutions:

(a) Gross National Product

GNP per capita in 1989: 230 dollars

Mean annual growth (1969-1989): -1.9 per cent

Annual inflation rate (1980-1989): 17.8 per cent.

(b) Total external debt

Public debt and publicly guaranteed debt, in millions of dollars (1989): 3,345

Non-guaranteed private debt (1989): 0

Loans from the IMF, in millions of dollars (1989): 165

Short-term debt, in millions of dollars: 97

Total external debt in millions of dollars (1989): 3,607.

(c) Total external debt ratios

As a percentage of exports of goods and services: 779.8

As a percentage of GNP: 154

Total debt service as a percentage of exports of goods and services: 52.0

Interest payments as a percentage of exports of goods and services: 27.8.

(d) Demography and fertility

Crude birth rate per 1,000 population (1989): 46

Crude mortality rate per 1,000 population: 16

Women of child-bearing age as a percentage of the female population: 44

Synthetic fertility rate in 1989: 6.5;
in 2000: 5.8.

(e) Urbanization

Urban population:

(i) As a percentage of the total population (1989): 24;

(ii) Mean annual increase (per cent) 1980-1989: 6.3.

Population of the capital city:

(i) As a percentage of the urban population (1990): 2.3;

(ii) As a percentage of the total population (1990): 6.

18. The policy of structural adjustment which Madagascar has had to accept has had serious social repercussions, including an increase in unemployment, a process of pauperization and the disintegration of the family nucleus leading to a high percentage of female heads of household (280 per 1,000 in 1987 among the vulnerable classes); the proportion of female heads of household is particularly high in the rural areas.

19. However, when the situation in 1990 is compared with that in 1985, it is possible to discern a number of significant improvements: a competitive exchange rate, the abolition of import quotas, the loosening of administrative restrictions on exports, the establishment of free zones, the drafting of a liberal investment code, a tighter budget, loans on favourable terms and a reduced internal debt.

20. The results for the first months of 1991 gave reason to hope that the financial crisis, which had continued into 1990, could be overcome without too many adverse effects on the ongoing process of adjustment and growth. The establishment of new institutions, which should conclude the current period of transition, should provide a basis for economic recovery.

D. Socio-cultural data

21. In conjunction with the circumstances which prevailed during the years 1991 and 1992, the economic situation briefly described above has led to deterioration, weakness and even regression in the socio-cultural sphere:

(a) Increasing pauperization, which is particularly affecting the more vulnerable elements of the population;

(b) Increasingly difficult access to the health services for the rural populations, which are either isolated or emigrating to the cities: in 1990 infant mortality was estimated at 110 per thousand. The maternal mortality rate (connected with childbirth) was 4.6 per cent;

(c) A fall in school attendance, for which there are several reasons: an apparently spectacular increase in the number of primary schools but, at the same time, deterioration of the equipment and the well-known inadequacy of the teaching staff, insecurity and poverty.

22. In 1990, in primary education the proportion of children attending school was 70 per cent with considerable regional variations. The corresponding figure for secondary education was 14 per cent, again with significant regional variations. The clumsy experiment with the Malagasization of education has worked against the implementation of a rational education policy leading towards development. It is well-known that Madagascar enjoys the privilege of possessing a national language, with various dialects. However, the fundamental problem of the language of instruction, linked with access to the various levels of education (secondary and higher), remains one of the priority concerns of the authorities responsible for the teaching and training of the young.

E. Religion

23. It is customary to stress the prevalence of the Christian religion in Madagascar. Certainly, the Christian religion is the faith of half the population, more or less equally divided between Protestants and Catholics. However, these figures should not be taken at their face value. More recent estimates are less optimistic as far as the Christians are concerned. In fact, the Protestant churches include both those that sprang from foreign religious missions and the independent churches or sects inspired by protestantism. In addition, about 47 per cent of the population practice the traditional religions; these are all rather similar to each other to the extent that they are all monotheistic. The spectacular rise of Islam must also be taken into account. There are something like 1 million Sunni Muslims, 70 per cent of them Malagasy.

II. GENERAL POLITICAL STRUCTURE

A. Political history of the State

24. Since the beginnings of its known history, four factors have determined Madagascar's political development: (a) the fact that it is an island in the busy Indian Ocean, (b) the appearance of kingdoms starting in the thirteenth and fourteenth centuries, (c) the successive predominance of certain kingdoms in the eighteenth and nineteenth centuries and, finally, (d) foreign intervention starting in the middle of the nineteenth century. These four factors are examined in more detail below.

1. An island in the busy Indian Ocean

25. The fact that Madagascar is an island has been and remains one of the principal sources of its profound unity, which goes beyond the diversity of the people, regions and topography. Despite the disputes, rivalries between monarchs and civil wars which have marked the history of Madagascar since the first populations were formed, its island nature has helped to bring the ethnic groups together and protect the people from the invasions and migrations to which countries with land frontiers are exposed. Moreover, the waters of the Indian Ocean have always been used for sea passages, while providing landing places for the early navigators and possibilities for seaborne migration.

26. Historical, archaeological and sociocultural research has reached a point at which the hypotheses concerning the origins of the Malagasy people have now been reduced to a few, although the actual facts are still uncertain: it is generally acknowledged that an indigenous population already existed during the periods of successive migration from Indonesia, East Africa, Arabia and, much later, Portugal. Moreover, these migrations succeeded each other over a long period about which little is known and were very probably localized, corresponding to natural migratory movements and points on the west coast at which vessels sailing through the Mozambique Channel went aground. The lesson to be learned from this period of prehistoric migration is that the various migrations often left a lasting mark on the social customs, legal traditions and structure of society.

2. Thirteenth and fourteenth centuries: appearance of kingdoms

27. In the thirteenth and fourteenth centuries, when the history of Madagascar begins to be better known, the geographical and human context accounts for the birth of kingdoms which, each in its turn, attempted to conquer its own living space, either by occupying virgin territory or by making war on the neighbouring kingdoms or large social groups. This period is also rich in sociological lessons in so far as it partially explains the extensive migrations of populations driven out of their lands or reduced to slavery. The probable result was a convergence of traditions and customs, and profound social changes within the groups that had been disrupted and persecuted and had suffered a serious breakdown of the social structure.

3. Predominance of certain kingdoms

28. The following periods were marked by the successive predominance of certain kingdoms, in particular the Sakalava Kingdom which, towards the end of the eighteenth century, imposed its authority, if not its influence, on at least half of Madagascar, as far as the gates of the capital of the Merina Kingdom, Ambohimanga. In the nineteenth century, weakened by internal conflict, the royal line of Sakalava was displaced by the expanding Merina Kingdom. But other kingdoms resisted penetration by the kingdoms which had successively exercised authority. At the time of the colonial conquest of 1895-1896, whole regions, especially in the south, had withstood the expansion of the Merina monarchy.

29. Though necessarily schematic, this survey of Malagasy history partly explains the island's subsequent and even current political development. However, it also confirms the movements of populations and the increasing complexity of a civilization of very diverse origin which internal wars, together with reconciliations, alliances and coexistence on the same territory, have helped to draw together and sometimes unify.

4. Foreign intervention

30. Foreign intervention and its influence, mainly that of England and France, became particularly important from the middle of the nineteenth century. Historically, England played a key role from the beginning of the nineteenth century (arrival of the first English missionaries in 1817) up to the partitioning of Africa by the colonial powers, following the Conference of

Berlin, and the Franco-British Convention of 5 August 1890, in which England recognized Madagascar as a French protectorate. In actual fact, this protectorate had been in effect since 1885. This period deserves to be studied in more detail, since it ended in the annexation of Madagascar and its transformation into a French colony, but this is not the place. Nevertheless, it is important to bear in mind the following facts about this troubled period: the opening up of Madagascar to the outside world, and the influence exerted successively by two European nations which introduced, in particular, new legal concepts, Christianity as inculcated by the missionaries and, with too little discernment, the French judicial system in force at the time of annexation. Admittedly, universal values were introduced and, in fact, are also to be found in the last Malagasy laws pre-dating 1896.

31. Following years of national resistance, independence was recovered progressively, first in the form of extensive autonomy within the so-called French "communauté", then by a negotiation procedure linking independence with Franco-Malagasy cooperation agreements.

B. Structure and nature of the State

32. In the history of the Malagasy State since 1960 it is possible to distinguish three periods during which the various constitutions or fundamental laws always referred to the Republican State.

(a) A neo-liberal period from 1960-1972, with a strong presidency, a liberal economic regime and a certain preponderance of French influence which, however, found expression in financial and material aid and technical assistance that made it possible to put in place the elements necessary to the life of a genuine State. This period ended in domestic troubles (insurrection due to famine and poverty in the south, serious trouble in the university and the schools, political crisis);

(b) A period of socialist leanings, preceded by the disturbances of 1972-1975, the logical but poorly controlled continuation of the change of regime which took place in 1972. The year 1975 saw the birth of a democratic republic intended to prepare the way for a socialist regime. The legal structures, in particular, were dominated by a constitution which gave a great deal of power to the president and was regarded as the enabling legislation for a fundamental text: the Charter of the Malagasy Socialist Revolution. From their analysis of this rather special situation the jurists concluded that this was a State subject to the rule of law, but limited by the existence of a legal structure, namely the Charter of the Socialist Revolution and the Constitution, the existence of a national front for the defence of the revolution consisting of an alliance of the parties forming the majority, and restrictions on various fundamental freedoms;

(c) A liberal and democratic period marked by the adoption of a new Constitution on 18 September 1992.

C. Present organization of the organs of power

33. The groundwork for the implementation of the new Constitution of the Republic of Madagascar has been laid during a transition period governed by a provisional Convention adopted on 31 October 1991 by all the parties concerned, in both the political and religious spheres. As the transition period has not yet ended, the present study of the organization of the organs of power will be mainly confined to a brief analysis of the constitutional provisions.

1. The general principles

34. The Constitution is preceded by a preamble whose contents are all the more important in that the preamble of any Constitution forms an integral part of Malagasy positive law (art. 13 of Ordinance No. 62041 of 19 September 1962). Leaving aside the classical provisions which figure in any preamble to a constitution with liberal tendencies, the following principles, in particular, are affirmed:

(a) Respect for international obligations, including previous treaties or conventions ratified by the Malagasy State or comprising important measures for the protection of children; this applies in particular to the international Covenant on Civil and Political Rights approved by Act No. 70001 of 23 June 1970;

(b) Respect for and protection of fundamental freedoms, those of the Universal Declaration of Human Rights but also of other international conventions (in particular, on the rights of women) and the liberties enshrined in the body of the Constitution itself (title II of the Constitution);

(c) The separation and balance of powers: the principle is ancient and well-established, but the notion of "balance" is expressly confirmed, together with the democratic procedures for implementing this balanced separation of powers;

(d) Transparency in the conduct of affairs and the participation of citizens in the exercise of power: the affirmations may be considered redundant, but they have a special resonance, since communication and the participation of the citizen in the management of public affairs have not always been among the foremost concerns of the State;

(e) The establishment of a State subject to the rule of law;

(f) The struggle against injustice, inequality and discrimination in all its forms.

2. Civil liberties

35. The first subtitle of title II of the Constitution is entirely devoted to the civil and political rights and duties of citizens, while the second subtitle is concerned with their economic, social and cultural rights and duties. It should also be noted that the drafters of the Malagasy

Constitution have incorporated in it civil rights and duties whose content is dispersed among various international treaties (civil and political rights, the economic and social rights and duties of the State).

3. The separation of powers and the State subject to the rule of law

36. The new Constitution is fundamentally different from the previous constitutions which gave priority to the executive branch and did not assign as much importance to the separation and balance of powers. The separation and balance of powers are ensured by a diminution, as compared with previous constitutions, in the prerogatives of the Head of State. The latter, however, is the guarantor of the Constitution, independence and territorial integrity. The President of the Republic appoints the Prime Minister, presides over the Council of Ministers and is the Commander-in-Chief of the Armed Forces. In legal terms, he represents a high authority directly elected by universal suffrage.

37. The prerogatives and organization of the legislative branch give it greater importance. These prerogatives are extensive: in particular the National Assembly designates the Prime Minister who must place before it a general political programme. The legislative function is broader in scope than under previous constitutions. There are, in fact, two chambers: the National Assembly and the Senate. The latter shares in the exercise of legislative power under a procedure that enables it to play a full part in the enactment of legislation.

38. The Prime Minister and the Government are responsible for the exercise of executive power. The Government has wide powers, but in exercising them it seeks to maintain a balanced relationship with the Parliament. The Government must submit an annual report on the implementation of its programme for debate in the National Assembly.

39. As compared with the previous systems, the judicial power has been radically reorganized. A constitutional, administrative and financial court has been established. This consists of three bodies: the Constitutional Court, guardian of the Constitution; the Council of State, which has jurisdiction over proceedings for the annulment of acts of the administrative authorities; and the Court of Audit, which audits the accounts of public accountants and has various watchdog functions. As a result, the Supreme Court, which already existed under the other constitutions, is now exclusively concerned with the proper functioning of the ordinary courts, through both its supervisory powers and its prerogative to judge applications for judicial review. However, the duties of the Supreme Court seem likely to increase because of the effective decentralization of the administration of justice resulting from the establishment of courts of appeal outside Antananarivo.

40. Thus there is a clear desire to achieve, by means of a system of procedures and provisions of some complexity, a real, balanced separation of powers, accompanied by a concern for balance in the exercise of those powers.

III. General legal framework within which human rights are protected

41. As described in the Constitution and the fundamental laws organizing each branch of justice, these institutions all contribute, within their competence, to the protection of human rights.

42. The judicial organization forms a hierarchy embracing:

(a) The courts of first instance and their sections. These are courts of primary jurisdiction and administrative measures are taken to ensure that they are accessible to the citizens, especially those furthest from the large urban centres. Thirty-one courts of first instance for such a widely scattered population of more than 10 million is clearly not enough to ensure genuine decentralization for the defence of human rights. However, efforts are being made to enlarge the number of courts and, through the "travelling hearing" system, to bring together justice and the citizen;

(b) The establishment and imminent inauguration of two courts of appeal (Majunga and Fianarantsoa) will help to give the citizen easier access to the channels of appeal and at the same time shorten proceedings;

(c) The Supreme Court has cassation functions over and above those already known. According to article 11 of the Act of 19 July 1961 establishing a Supreme Court, the interests of the law and violation of the general principles of justice are grounds for review. Thus, a judgement without right of appeal, even if it has already been the subject of a decision in cassation, can be questioned when it is manifestly contrary to the general principles of law and the principles of equity.

43. As the law now stands, the Constitutional Court has relaxed the procedure for bringing cases before it, which is normally limited to the plea of unconstitutionality, by implicitly examining the questions of substance whose elements form the grounds for the finding of unconstitutionality. A decision of the Constitutional Court of 19 February 1985 states that "the verification of constitutionality is not restricted to the examination of the plea ... the scrutiny of all other acts that might interfere with the exercise of the fundamental rights and freedoms guaranteed by the Constitution is also, implicitly but necessarily, within the jurisdiction of the Constitutional Court".

44. Article 40 of the Constitution of 18 September 1992 provides that "the State shall undertake to establish an independent body responsible for promoting and protecting human rights". It is no doubt in application of this new provision of Malagasy law that the Government has appointed an ombudsman and undertaken to provide him with the means of performing his duties.

45. There is no provision in Malagasy national law for a special system of compensation for the violation of human rights. Nevertheless, the application of the general principles of law and the opportunity for any victim of abuses or violations to bring an action before the courts provide a normal framework of recourse for infringement of human rights, with the possibility of damages being awarded. Article 13 of Ordinance No. 62041 of 19 September 1962 states

that the general principles are "incumbent upon the judge who must, in every case, ensure that they are respected and observed within the framework of the legislation in force".

46. The instruments relating to human rights are incorporated de jure in national law following accession and ratification in the form prescribed by international public law. It must be acknowledged that the incorporation of the provisions of international conventions in domestic law makes the application of the conventions and treaties more effective, focuses the mind of the authorities and helps to make the provisions of international law, which do not always attract attention, better known to the public.

IV. Information and publicity

47. Within the Malagasy Government, each of the ministries concerned monitors the application of the international conventions and prepares the reports requested by international committees. On various occasions intensive information campaigns aimed at special groups may be organized.

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